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August 19, 1975

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Gentlemen:

PUBLIC DEFENDER MANAGEMENT AUDIT REPORT

On April 9, 1974 the Board of Supervisors, on motion of Supervisor James A. Hayes, instructed this office to review the full scope of the Public Defender's function and policies. Following preliminary work done by my budget staff, a multi-discipline team was organized through my newly-formed Management Audit Division last October.

To accomplish a comprehensive management audit of the Public Defender, the team examined all aspects of the Public Defender's department including the organization and its functions, management policies and procedures, staffing allocation and resource utilization, personnel policies, and the interaction of the Public Defender with the other justice system agencies. The audit team interviewed well over 300 personnel of the Public Defender, judges, and other judicial officers, District Attorney, Probation Department, and private attorneys and contacted nine other counties and the Los Angeles County Bar Association.

As a result of these efforts, the audit team has reached the following two general conclusions regarding the operation of the Los Angeles County Public Defender:

-- The Public Defender's office is universally credited with providing competent legal services through the efforts of dedicated, enthusiastic, and hard-working attorneys and support staff.

-- The Public Defender has not formulated the management policies and procedures necessary to most effectively administer and control the activities of approximately 575 personnel located throughout the County.

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To increase the management capability of the Public Defender, we recommend organizational changes to reduce the number of subordinate personnel reporting to the Public Defender and his Chief Deputy, the delegation of many personnel activities to a highly responsible personnel position, and the strengthening of administrative services. Through implementation of these changes, the Public Defender and his Chief Deputy will have additional time to manage their department, participate with other justice agencies to resolve problems, and communicate matters of interest to the Board of Supervisors.

To increase the management effectiveness of the Public Defender, we recommend numerous specific policy and procedural changes be implemented by the Public Defender. Most of these relate to the professional direction and supervision of departmental personnel and reflect suggestions of departmental personnel, judicial officers, and others on how to further improve the quality of legal services provided by the Public Defender.

The immediate budgetary impact of the recommendations included in this report is a net increase of 3.0 positions and, approximately, $60,000 for the Public Defender to implement the necessary organizational changes. Judges throughout the County almost universally stated that Deputy Public Defenders (and their support staff) are overworked, although still performing competently in accordance with the ethics of their profession in representing their clients in court. Except for the Juvenile Division where additional staff are recommended in the 1975-76 budget, but the cost offset by a reduction in payments to court-appointed private counsel, no other changes in Public Defender staffing are recommended.

Our principal findings and recommendations regarding Public Defender organization, management policy, scope and conduct of activities, staffing, personnel, and administrative budgetary controls are summarized below. Further discussion, specific findings, and recommendations are in the attached detailed audit report.

I. ORGANIZATION

The organizational structure of the Public Defender's department is not ideally suited to the work demands placed on it. Essentially, the organization--with the exception of the impact in the 1960's of the absorption of the Los Angeles City Public Defender's office--simply expanded existing units, or added organization units to serve additional courts and functions. During the 1960's, the department acted to cope

with the rapid changes in defense procedures and staffing growth by establishing the Branch and Area Offices Division, the Juvenile/Mental Illness Division, the Administrative Services Division, and several high-level positions. As a result, there are substantial differences in the number of staff assigned to various divisions, and in the levels of staff reporting directly to the Department Head/Chief Deputy. The span of control of the Department Head/Chief Deputy is excessive.

Similarly, the department is attempting to administer its internal functions, notably personnel matters, in the same fashion as when it was a considerably smaller organization.

RECOMMENDATIONS:

1. Reduce the number of divisions reporting to the Department Head from eight to six by consolidating the civil, appellate, and mental illness functions into a Specialized Services Division under the direction of a new position at the level of a legal division chief, and combining the investigative and administrative functions into an Administrative Services Division. The placement of the investigative function is recommended for a one-year pilot program. During the year, the assignment will be evaluated and a final determination will be made at that time.

2. Recognize the importance of the Juvenile Division by creating a new position at the level of a division chief to direct its activities and to be on par with other legal division chiefs.

3. Delegate responsibility for most personnel matters from the Chief Deputy to a new highly responsible personnel position.

4. Establish a supervising administrative assistant position to direct the Management Services Section.

II. MANAGEMENT PHILOSOPHY AND POLICY

The overall management philosophy of the Public Defender's department is based on maintaining the defense attorney's ethical responsibility to be able to act independently on

behalf of his clients. As a result, written departmental policy on case conduct is quite limited as it is regarded as a potential intrusion upon professional freedom and detrimental to the client-defense attorney relationship. Instead, the department relies upon informal communications to staff. While the department asserts that it follows County policy regarding administrative procedures, there are specific incidents where County policy of greater substance has not been observed. This managerial attitude may have been defensible when the Public Defender had a 50-man attorney staff quartered centrally, but today's problems in managing over 400 attorneys in 37 locations and responsibility for the expenditure of over $13 million in taxpayer funds annually demand more formalized management control techniques and professional supervision.

The department has considered but chosen not to participate in any of the Federal grant programs, thereby foregoing any opportunity to increase their efficiency or the level of service through the use of federally-funded staff.

The department tends to function independently from a system in which it must be a full participant. While there is participation in several committees and associations both within and without the County, the other County justice system departments indicate that the department's involvement is minimal, as are their relationships with the Board of Supervisors. Such participation should be considerably more extensive.

The department's provision of only minimal professional supervision over attorney personnel has also resulted in some instances in a disproportionately high percentage of cases being tried or continued at the inconvenience of victims, witnesses, and the courts. The audit team fully understands the ethical responsibilities of a lawyer's independence from any factors not to the best interest of his clients. However, based on discussions with judicial officers and other justice system participants in Los Angeles County and with Public Defenders in eight other California counties, the audit team concludes that Public Defender services can be improved, and the client-attorney relationship sustained in the best interest of the client, if professional supervision is strengthened.

RECOMMENDATIONS:

4. The Public Defender more actively participate with other justice agencies in joint problem definition and solving activities.

5. The Public Defender communicate matters of interest in a timely fashion, including individual case actions, as ethically appropriate, to the Board of Supervisors.

6. The Public Defender take advantage of Federal grant programs to improve his services and to meet County-wide objectives.

7. The Public Defender more fully exercise professional supervision over subordinate personnel when it is to the best interests of the department and the client.

8. The department establish and formalize management and administrative policy into a manual available to all personnel.

III. SCOPE AND CONDUCT OF ACTIVITIES

Public Defenders are credited by the entire justice community with representing their clients in an outstanding manner. The office's practice of seeking every conceivable defense has resulted in a tendency to expand service levels beyond those mandated by statute.

Unlike the other nine counties we surveyed, our Public Defender maintains an appellate staff of 10 Deputy positions which, in 1974, filed 68 felony appeals, and carried 74 appeals to the State Supreme Court. Had the Public Defender not handled these appeals, it is possible that they could have been conducted by State-appointed attorneys at State expense. It is common for other counties not to devote staff to civil activities but to refer all such inquiries to local legal aid or bar association agencies. The Public Defender allocates a minimal staff of five positions to civil activities.

Although the Department does not have formal guidelines to determine financial eligibility for its services, there is no evidence that this lack of policy has led to excessive or widespread abuse. Positive assurance that all Public Defender clients are indigent or cannot obtain a private

attorney is difficult and may be fiscally impracticable. This issue is discussed more extensively in the section on Administrative and Budgetary Controls. Generally, the Public Defender's staffing pattern provides at least one Deputy for each court at all times. If for no other reason, the Defender's availability makes it more desirable for the court to appoint the Public Defender, rather than allowing a defendant additional time, and another court appearance to attempt to obtain private counsel.

During the past year or two, the Public Defender has undertaken legal measures to oppose the Board. In one instance, this opposition took the form of an injunction enjoining the Board from effecting a juvenile housing relocation program. In addition, the County Counsel has advised the Public Defender that he exceeded his statutory authority in the instance of his participation in a suit against the "Judges of the Superior Court for the County of Los Angeles, State of California, as a class." These actions were taken by the department deliberately and unilaterally. The audit team finds such actions to be extraordinary and unique particularly since the department made no effort to discuss its views and differences on the matters at issue with the Board of Supervisors. We find that as a County officer, it is the duty of the Public Defender to keep the Board informed of actions he plans to take in the best interests of his clients. There are adequate remedies available without the abrupt legal measures which have been utilized in recent months.

RECOMMENDATIONS:

9. The Public Defender establish formal guidelines for determining the financial eligibility of clients.

10. The Public Defender continue to exercise close surveilance over potential appeal cases in order to make certain that only those cases are pursued which have a clear opportunity for reversal or modification.

11. As indicated in our discussion under conflicts of interest, that the County support legislation to create a State Department of Public Defender to possibly assume responsibility for a number of appellate matters.

12. The Public Defender regularly take the initiative in discussing its views and differences with the Board of Supervisors in order to resolve problems and work together cooperatively.

13. That the Board direct the Public Defender to desist from filing injunctions, class actions and any other type of action he is not presently authorized by law to participate in. That the Board further direct the Public Defender to cease participation in any such actions now pending.

IV. STAFFING

Public Defender workload is such that all personnel--attorneys, investigators, clerical/secretarial, and administrative--consistently have backlogs or professional case duties to perform that regularly require work beyond normal working hours.

Variations in judicial district workload and in court management procedures impose workload requirements on the Public Defender somewhat beyond its control. The department lacks a definitive workload statistical reporting system. Statistics showing the stage of court proceedings reached by individual Public Defender cases and case disposition would assist departmental management both in reporting and monitoring performance and in allocating staff to various offices and functions. Work assignments at individual offices are at the discretion of the deputy in charge with no formal office guidelines.

In all but Juvenile Court, the current year's budgeted level of attorney staffing appears adequate, but minimal. In Juvenile Court, judicial officers appoint an inordinately high number of private counsel at greater cost to the County because Public Defenders are not available. As discussed below, the efficiency of attorneys is hampered at some offices from a lack of clerical/secretarial and investigative support and from inadequate office space. This matter is also discussed in more detail later in this report.

RECOMMENDATION:

14. The Public Defender initiate,with the cooperation of the CAO, a comprehensive statistical reporting system showing the disposition of all cases and other relevant management information.

V. PERSONNEL

The Department of Personnel assumed responsibility for a comprehensive audit of the Public Defender's personnel administration and practices. The dedication and general high morale of the department's staff is universally evident. However, promotional opportunities are becoming more limited as the department's rapid expansion rate over the past decade slows. These factors present a challenge to departmental management to maintain the present high morale in the future.

During the course of the Management Audit, the department has accelerated its efforts to strengthen its personnel administrative procedures notably in the area of performance evaluations. In addition, the department has increased the number of its management staff who are assigned to the Department of Personnel interview boards. This practice will benefit both the professional growth of the participants and bring a greater variety of experiences and viewpoints to the interview board.

The Public Defender also has a highly regarded ongoing training program for attorneys, although the initial orientation period program can be improved. Personnel policies should also be formalized and/or established so that all personnel are appropriately informed. There are serious deficiencies in the department's performance evaluation procedures. These deficiencies include such areas as discussing the evaluation with the employee, securing employee signatures on the evaluations, using the comments section appropriately, and failing to evaluate a significant number of staff. Similarly, the procedure by which Appraisals of Promotability are prepared needs strengthening and standardizing. The affirmative action program is moderately successful, but could be improved.

RECOMMENDATIONS:

15. Personnel policies be established and formalized into a manual available to all personnel.

16. The department more fully observe all recommended County personnel procedures, including those related to annual performance evaluations on all personnel and appraisals of promotability.

VI. ADMINISTRATIVE AND BUDGETARY CONTROLS

The department's budget process and expenditure controls are highly centralized and apparently meet accepted standards of accountability. The Auditor-Controller is currently conducting a detailed fiscal and procedural review and will report separately on any needed improvements. In recent years, any over-expenditure of its budgetary appropriation has generally been to meet emergent staffing requirements for the courts with the formal approval of the Board of Supervisors.

Because of the highly centralized process, departmental middle management has not been, in the past, involved in, nor aware of, the budgetary or other administrative processes as they should be. During the course of the management audit and in response to early audit team suggestions, the department this year initiated middle management budget discussions. In addition, the budget analyst had several direct contacts with field offices.

The department's negative time reporting system offers the potential for abuse, but the audit team has no evidence of this occurring.

A related matter not the direct responsibility of the Public Defender is the partial repayment by defendants for the cost of court-appointed defense counsel, pursuant to Section 987.8 of the Penal Code, and by parents in juvenile cases pursuant to Sections 903 and 903.1 of the Welfare and Institutions Code. Because the constitutionality of the repayment provision was not affirmed until recently and because no County-wide procedure for determining the amount of the repayment or its collection has been established, the pattern of repayment for the cost of Public Defender services is very inconsistent in courts in Los Angeles County. Although the Auditor-Controller has established rates for Public Defender services and deputies keep appropriate time records, the lack of a County-wide policy and procedure hampers the court's ability to impose the repayment provision. A committee composed of Superior and Municipal Court judges, this office, and other related agencies is working on this problem and will present recommendations for its solution within the next several months.

RECOMMENDATIONS:

17. The Public Defender augment the involvement of his middle management personnel in budget preparation and justification, and other administrative processes.

18. The Chief Administrative Officer continue to work with the Superior and Municipal Courts and other related agencies to develop a County-wide system for the imposition and collection of fees for Public Defender services.

In addition to our findings and recommendations concerning the Public Defender, the audit team received numerous other suggestions regarding the operation of the justice system as a whole and specific recommendations affecting other County departments. Although these are outside the scope of this management audit, the audit report includes a brief listing of these of these observations and suggestions.

The attached audit report has been reviewed with the Public Defender.

THEREFORE, IT IS RECOMMENDED THAT THE BOARD OF SUPERVISORS:

1. Approve the attached "Management Audit Report of the Public Defender", instruct the Public Defender to

implement the recommendations therein, and report progress toward such implementation on a quarterly basis over the next year.

2. Approve the organization detailed on the attached together with the four new positions: Two at the level of division chief for the new Specialized Services and Juvenile Divisions, an administrative and a personnel position, subject to classification findings by the Civil Service Commission. One legal division chief addition will be offset by the deletion of one position of Head Deputy, Public Defender.

3. Instruct other affected departments to assist in the implementation of the recommendations contained in the "Management Audit Report of the Public Defender."

Very truly yours,

Harry L. Hufford

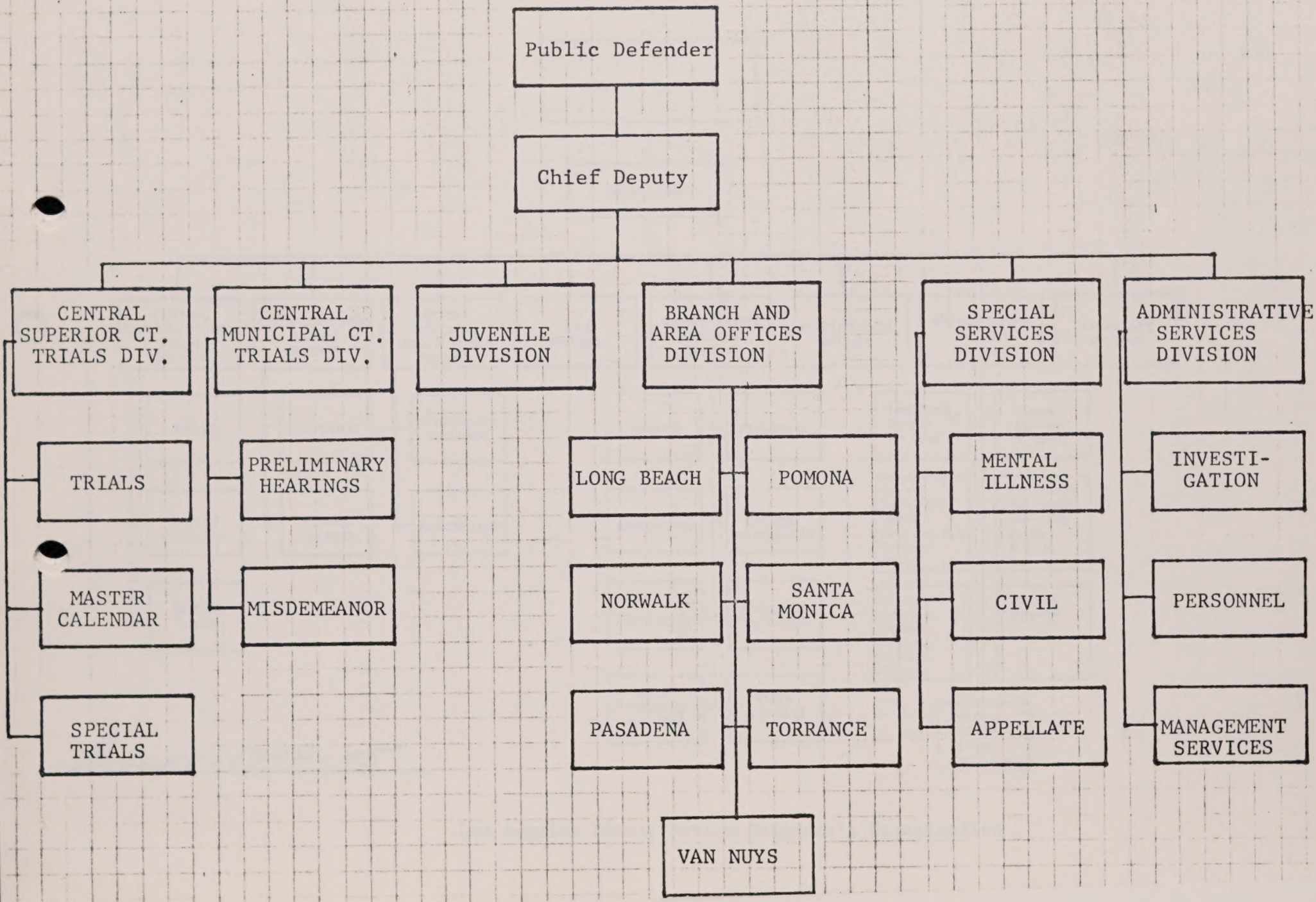
HARRY L. HUFFORD
Chief Administrative Officer

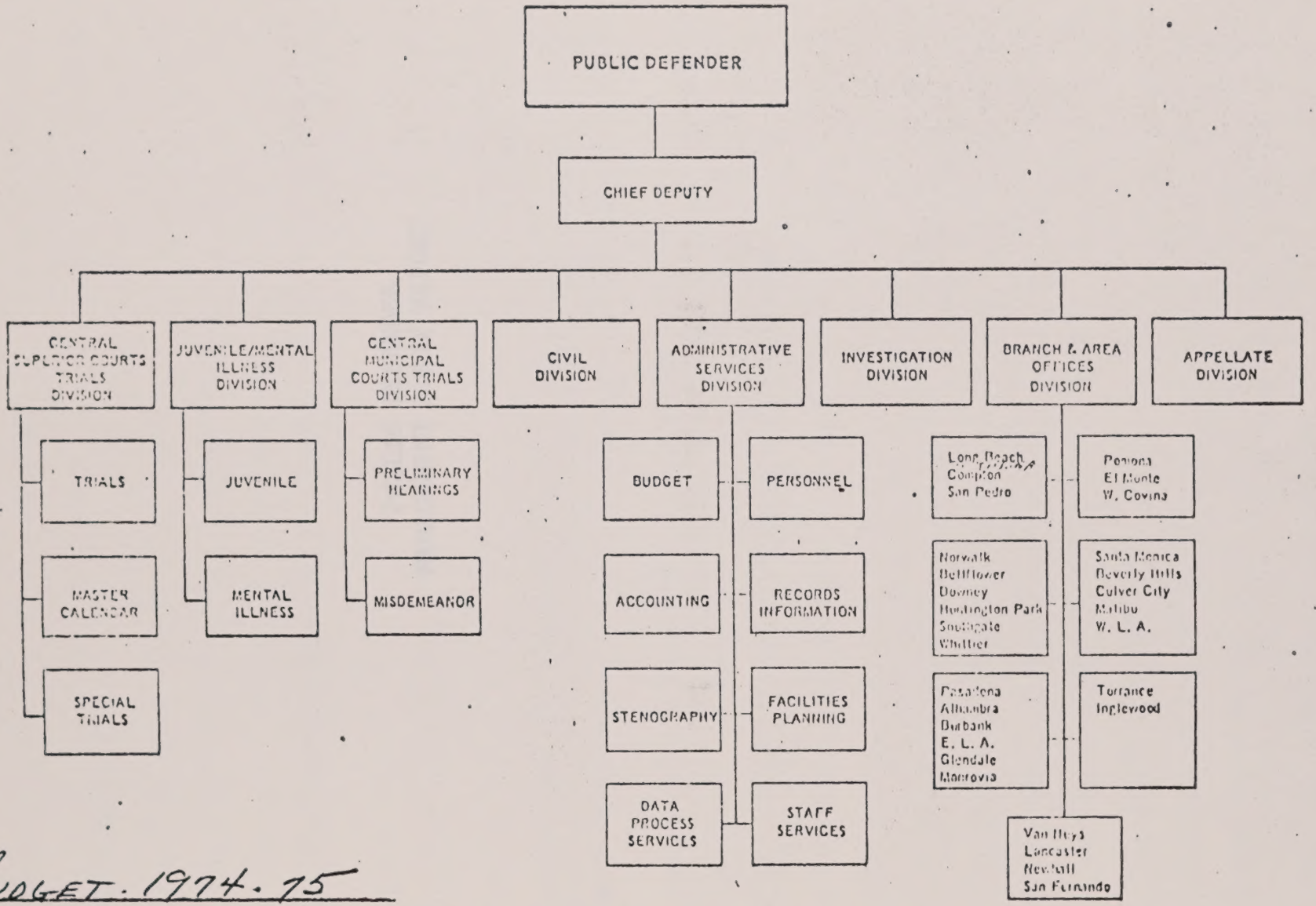
HLH:DRS
CAN:kh
Attachments
cc: Each Supervisor
County Counsel
Public Defender
Superior Court
Each Municipal Court District
Auditor-Controller
District Attorney
Department of Facilities
Department of Personnel
Probation Department
Los Angeles County Bar Association

PUBLIC DEFENDER

RECOMMENDED ORGANIZATION

JULY 1, 1975





BUDGET. 1974. 75

Los Angeles County Public Defender's Organization

PUBLIC DEFENDER
MANAGEMENT AUDIT REPORT

Chief Administrative Office
August, 1975

PUBLIC DEFENDER MANAGEMENT AUDIT REPORT

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INTRODUCTION

Origin of Study and Methodology

The Board of Supervisors instructed the Chief Administrative Officer "to review the full scope of the Public Defender's function and policies". The Chief Administrative Officer advised the Board of Supervisors that the management audit would be conducted by a multi-discipline team. The audit would encompass not only the clerical, administrative and general management aspects of the department, but also their legal and professional policies and procedures. The audit was scheduled to begin soon after the final budget was adopted.

The decision to conduct an audit was an outgrowth of the Board's concern, expressed repeatedly over several years, about the quality, effectiveness, range and propriety of Public Defender work in Los Angeles County.

The audit plan was to (1) examine management policies and procedures and to determine the appropriate organization and staffing pattern for the department, and (2) to define procedural problems, bring them to the attention of departmental management, and make recommendations for their solution.

Specifically, we have examined management policies and procedures, managerial leadership and control, the communications system, the legislative review procedure, the professional development program, levels of service/scope of work, administrative and personnel management procedures, the interaction of the department in the justice system, utilization of resources, and budget and fiscal policies. These studies were conducted largely by extensive interviews and observation by the audit team, as well as examination of various written materials-memoranda, correspondence, statistical reports, staff meeting minutes and similar items.

We also enlisted the services of the Department of Personnel which closely examined the department's personnel program by means of interviews, observation, analysis of written material, and a questionnaire to a selected representative sample of professional and non-professional staff. The findings and recommendations from this portion of the audit have been incorporated largely into the main audit report.

The management audit team programmed a comprehensive interview schedule including:

1. Public Defender Department
   a. The Public Defender and the Chief Deputy Public Defender
   b. Every division chief and assistant division chief
   c. Every branch head and area deputy-in-charge
   d. Selected non-supervisory staff--professional and non-professional

2. Judiciary
   a. Every superior court district supervising judge or assistant supervising judge.
   b. Every municipal court district presiding judge
   c. The juvenile court presiding judge
   d. Several juvenile court commissioners

3. District Attorney
   a. The chief deputy district attorney and the assistant district attorney
   b. Every branch deputy-in-charge

4. Probation Department
   a. Both assistant probation officers
   b. Every district office director
   c. A few other selected management staff

5. Outside Los Angeles County
   a. The Public Defenders or chief deputy public defenders in the Counties of Alameda, Kern, Orange, Riverside, San Bernardino, San Francisco, Santa Clara and Ventura. Santa Barbara was contacted but the Public Defender position was vacant.
   b. A representative from the San Diego non-profit organization which provides public defender services.
   c. Selected other persons in these nine counties such as judges, district attorneys and probation officers.

This interview schedule involved discussions with upwards of 300 persons. It was designed to produce a comprehensive picture of public defender services, policies and relations in a wide variety of situations and locales.

Public Defender Offices in California

In an effort to analyze comparative levels and philosophies of service, staffing patterns and management policies, the audit team visited nine other counties in California.

Since the basic Public Defender areas of responsibility are defined by State law, there are only minor variations in services among the nine counties. Individual interpretations, financial resources and management styles, however, do influence the levels and character of service somewhat.

As to size, most counties are more comparable to a branch office in Los Angeles than the entire County. Seven of the nine counties have appointive Public Defenders. The Public Defender in San Francisco is elective. San Diego County utilizes a non-profit organization and court-appointed attorneys for defense counsel services.

The audit has been conducted during a period of considerable unrest. Pressing problems in the justice system, particularly those related to juvenile, have received particular attention from the Board of Supervisors, several County departments and the public. There are a number of official and ad hoc committees working. While we have been aware of these activities and generally cognizant of their portent, we have neither waited for their outcomes nor attempted more than a minimum of coordination with their efforts. To do so would have caused insurmountable delays. It is our belief that the surfacing of all the information and views of these several efforts will contribute to a better resolution of the problem, and will do it more expeditiously.

Background

The Public Defender movement in California began in the 1890's with the unsuccessful introduction in the State Legislature of bills to allow counties to create Public Defender offices. This legislation stemmed from growing dissatisfaction with the system of appointed defense counsel.

The first Public Defender office in the United States was established by the County of Los Angeles in 1914 and the Public Defender was one of the original County appointive officers. Section 23 of the County Charter requires the office to provide legal defense services to persons financially unable to furnish counsel for court proceedings involving criminal, juvenile, mental illness and civil matters. Initially, the Public Defender's jurisdiction was confined primarily to the defense of adults in Superior Court criminal cases and representation in civil matters. Not until 1921 did the State Legislature authorize general law counties to establish Public Defender offices.

Representation of defendants in felony preliminary hearings in municipal courts which did not have a City Public Defender, became a responsibility of the County Public Defender during 1951-52. The preliminary hearing jurisdiction was expanded to include the City of Los Angeles in 1959.

In 1960-61, State legislation permitted representation of juveniles in juvenile court proceedings. Representation for misdemeanor defendants in municipal courts was added by the State Legislature in 1965. The City of Los Angeles abolished its Public Defender office as a result of that legislation. This legislation was precipitated by four landmark court decisions: Gideon vs. Wainwright (1963), People vs. Douglas (1964), in re: Johnson (1965), and Avan vs. Municipal Court (1965).

The Gideon and Douglas cases reaffirmed the constitutional right to counsel at all stages of a legal proceeding. The Johnson case pointed out that such right to defense counsel was not limited to felonies but was guaranteed equally to misdemeanor defendants in municipal or lesser courts. This case also found that the right to counsel could not be waived unless consideration were first given to the complexity and seriousness of the charges. The Avan decision required the County to pay court-appointed private attorneys where the Public Defender was prohibited by law from representing a defendant. These events all impacted simultaneously with the inundation of defense counsel work attributed to the Watts riots.

In 1966, the Blake vs. Municipal Court case held that a defendant pleading guilty to a traffic misdemeanor did not properly waive his right to counsel, even though the court had so informed him of that right. With this decision, judges began to appoint counsel in traffic matters.

Miranda vs. Arizona, also in 1966, decreed that defense counsel must be present during police interrogations, if requested by the defendant.

Tremendous impact upon juvenile defense proceedings erupted with In re Gault in 1967, when the Supreme Court extended to juveniles many of the rights of defense which had been accorded adults previously. This decision was supported by State legislation in that same year. In 1966, three attorneys were assigned to Juvenile Court. By 1972, the number had grown to 35, and for 1975-76 will by 67.

Still in 1967, in United States vs. Wade, it was held that defense counsel must be present at police line-ups, if requested by the defendant.

The creation of Section 1538.5 of the Penal Code by the State Legislature in 1967, relating to tighter interpretations of search and seizure evidence, has increased the total time required for each case, both in court and out, by an amount estimated by the Public Defender at 100%. Subsequently, numerous court rulings, appeals decisions and legislative enactments have continued to intensify the work of defense counsel--both public and private (see Appendix A). A tightening and sophistication of legal processes such as trial court procedure, rules of evidence, search and seizure, and written motions as well as widespread increases in crime, have all contributed to the growing complexity and scope of the Public Defender's responsibilities and operations.

The growth of the office in the decade 1963-64 - 1973-74 is reflective of the increased emphasis upon defense procedures discussed above.

	1963-64	1973-74	Per Cent Increase
Case Proceedings	32,435	232,132	610%
Staff	90.1	558.5	520%

Public Defender services are rendered from 37 offices organized into nine branches.

Role of the Public Defender in the Justice System

The Public Defender and his deputy staff face occasionally dichotomous responsibilities as civil servants and as attorneys. As a civil servant, a Public Defender has responsibility within his own department hierarchy to other County agencies, to the Board of Supervisors, and to the public. As an attorney, a Public Defender is governed by the ethics of this profession, which require that he maintain independence of professional judgment and undivided loyalty to protect the interests of his client.

Occasionally, and appropriately so, a Public Defender's actions in court on behalf of his client may appear to be directed against, or be disruptive to, the operations or interests of other County agencies. The Public Defender can minimize these disruptions by only resorting to court action after attempting to work out the problem with the affected County agencies and by informing the Board of Supervisors and other appropriate County agencies of the court action in a timely fashion. The Department asserts that its efforts to resolve differences with other County departments have not always been as successful as desired and it is these problem areas which have received widespread visibility.

Although most courtroom participants are County employees, in court they are adversaries with different loyalties--the District Attorney (or other prosecuting agency) represents the people and attempts to prove that the defendant committed a crime against the State, the Public Defender (or private defense counsel) represents the defendant, and the judicial officer or jury must determine the defendant's guilt or innocence based on the validity of the prosecution's allegations and the defense's arguments.

Municipal Court - The 25 Municipal Court districts in Los Angeles County hear all misdemeanor cases. The accused is arraigned before a Municipal Court Judge, at which time he can plead guilty or request a court or jury trial. The Public Defender usually interviews the defendant at arraignment, assesses his financial eligibility, and assists and advises him in entering a plea of guilty or not guilty. Should the eligible defendant request a trial, a Public Defender will represent him in court.

Prior to the trial, a Pre-trial Hearing is held at which the Public Defender and the City (or District) Attorney may present evidence to the judge to reduce the charges to something to which the defendant will admit. If the case cannot be settled at this level, it proceeds to trial.

In addition to trying misdemeanors, the Municipal Courts also conduct arraignments and preliminary hearings for all felony cases to determine whether a felony has been committed, and if probable cause exists to believe the defendant committed the crime. The Public Defender represents indigent defendants at preliminary hearings. If it is determined that a felony was committed and the defendant is held to answer, the case is transferred to Superior Court for arraignment and trial.

Superior Court - The Superior Court tries all felony offenses. The defendant is arraigned in Superior Court 14 days after being held to answer at his preliminary hearing. At this arraignment the defendant, through his attorney, can either plead guilty, calendar various pre-trial motions, or request a court or jury trial. Some Superior Court trials are handled on the basis of the transcript of the preliminary hearing and may or may not include the presentation of additional testimony. Should the individual plead guilty or be found guilty at trial, he returns for a Probation and Sentencing hearing at which time the judge, with the aid of a Probation Officer's report, pronounces sentence. The Public Defender represents indigents through all stages of Superior Court.

Writs and Motions - At various points during the above proceedings, the Defense Attorney may move to have the case dismissed, evidence suppressed, or similar motions. For example, he may file a 1538.5 motion alleging that the evidence of the crime was illegally seized and should be suppressed, or he may move that under Section 995 of the Penal Code, there is not reasonable or probable cause to hold the defendant to answer. Writs and Motions are prepared and presented by the Public Defender.

Other Court Proceedings - Additional miscellaneous court proceedings include narcotic diversion hearings, extradition hearings, probation violations and mental illness hearings. All of these proceedings involve the Public Defender if the defendant is indigent.

ORGANIZATION

General Observations

The organizational structure of the Public Defender's department is not ideally suited to the work demands placed upon it. Essentially the organization--with the exception of the impact in the 1960's of the demise of the Los Angeles City Public Defender's office--has simply expanded existing units, or added branches and offices to service additional courts. As a result, there are vast differences in the number of staff assigned to various divisions, and in the levels of staff requiring direct access to the department head/chief deputy. In a similar vein, the department is attempting to maintain its internal functions--notably personnel administration--in the same fashion as when it was a considerably smaller organization.

Span of Control

Findings:
The span of control for the department head/chief deputy is excessive considering the diversity of operations and the intensity of activity.

Description:
Eight divisions report directly to the department head/chief deputy. These units are: Branches and Areas, Central Superior Courts, Central Municipal Courts, Juvenile/Mental Illness, Civil, Appellate, Investigation and Administrative Services. While this span would ordinarily be considered manageable, there is substantial variation in the staffing and functions of the divisions. Realignment would both concentrate like functions together and group smaller units under coordinated direction.

RECOMMENDATIONS:

1. Remove Mental Illness from Juvenile/Mental Illness Division. This appears to have been a geographic rather than functional assignment and is not justified. The mental illness function receives modest attention from the present division chief.

2. Juvenile Division is of sufficient importance and impact in the justice system to stand alone. Establish a new position at the level of division chief for the Juvenile Division.

3. Combine the Mental Illness Section with the Civil and Appellate Divisions, redesignate the latter two units as sections, and form a new unit of Specialized Services Division.

4. Since the Investigation Division is composed of non-legal staff who serve the entire department, it should not be attached to any of the legal-oriented divisions. Neither should it report directly to the department head/chief deputy if we are to maintain an effective span of control. Therefore, the Investigation Division should be placed in Administrative Services. Such an assignment will facilitate the utilization of investigation services department-wide as well as free the department head/chief deputy from additional direct supervision responsibilities. We are aware that the department for several months has assigned this division to the direction of the Central Superior Court Trials Division on a pilot basis in order to reduce the span of control problem discussed above. We believe continuation of this relationship is inappropriate and should be terminated.

5. Group the present Administrative Services functions in a Management Services Section reporting to the present position of Head, Administrative Services, Public Defender. We recommend that this position be studied by the Department of Personnel for possible reclassification.

6. Designate the new personnel position as Head of the Personnel and Training Services Section, reporting to the Head, Administrative Services, Public Defender.

Administrative Services

Findings:
The Administrative Services Division has comprised the usual range of departmental support services, and is directed by a position of Head, Administrative Services. With the addition of the Investigation Division, and a comprehensive personnel program, the division head position needs upgrading.

Description:
The division has been responsible for budget, accounting, payroll, records information, facilities planning, data processing, clerical services and some personnel functions. Its position has been subordinated to the legal divisions in the general management of the department.

RECOMMENDATION:

Upgrade the position of Head, Administrative Services through a reclassification study with the intent of establishing a more highly responsible classification, at a salary level commensurate with the expanded duties and responsibilities of the position. The new administrative class would better recognize the significant role in overall department operations particularly budget process, personnal administration, facilities planning, and management information exercised by this position.

Investigation

Findings:
The Investigation Division serves all the department's legal staff and receives only general administrative supervision.

Description:
The Investigation Division, while headquartered and directed from the central office, disperses its staff to the branches and performs investigative services for all the legal staff in connection with their trial work. The division is organized along law enforcement/military lines, has a highly developed operating manual, and effective leadership. As with the other divisions, its workload is relatively high and the nature of its assignments requires off-hours work. It was reported that investigators work at some risk to themselves and they make special efforts to avoid the appearance of being law enforcement officers.

The division in the past has reported to the department head through the chief deputy. Recently, supervision of the division has been assigned to the Chief, Central Superior Court Trials on a pilot basis in order to reduce top management's span of control.

The audit team believes this organizational placement is inappropriate. Central Superior Court Trials is regarded as the most prestigious and challenging function in the department. Its workload and the pressures of seriousness and consequence are severe. As a result, supervision of investigation functions is most nominal. In addition, the division serves all legal functions, and the present location could lead to conflicts in priorities and objectives. Some dissatisfaction has been expressed regarding the present situation.

We believe the division should be recognized as a service function to the entire department and should be placed where it can both receive appropriate administrative direction and be able to resolve conflicting requests for services. In addition, we agree with the desire of the department to reduce the top management's span of control.

RECOMMENDATION:

The division should be assigned to Administrative Services for administrative supervision and control purposes. When performing work for legal staff, technical direction would continue to be received from the deputies as it is at present.

DEPARTMENTAL MANAGEMENT AND POLICIES

General Observations

The overall philosophy of the Public Defender's department is that it is composed of professionals who are admitted to the Bar and are, therefore, fully qualified to practice law. As a result, the department regards written policy statements as intrusions upon professional freedom and they are not encouraged. It is the audit team's belief, however, that this posture is observed only so long as it is convenient and explicable. For we also found that the department does announce policy and provide guidance in some areas. But it is careful to label these as recommendations, suggestions and guidelines, apparently to achieve greater acceptance.

The department desires to be largely independent of direction or influence by County government as it believes such independence is essential to the effectiveness of its mission. Consequently, it holds its contacts with other departments, particularly in the County justice system, to a minimum. It generally does not inform other departments of its actions or intentions. In terms of Board policy, there is substantial indication that the department prefers to react rather than act. Contrary to the Public Defender's view, many justice system interviewees indicated that the department regularly does not participate in problem resolving discussions, but instead criticizes the policy which emanates from the discussion.

The Public Defender's office is universally credited with providing competent legal services to indigents or those unable to employ private counsel through the efforts of dedicated, enthusiastic, and hard-working attorneys and support staff.

The Public Defender has not formulated the management policies and procedures necessary to most effectively administer and control the activities of approximately 575 personnel located throughout the County.

Relationships with Justice System Departments

Findings:
The department management needs to strengthen its leadership role to both direct the services of the department and to maintain a positive working relationship with other justice system departments. Serious judgmental decisions affecting that relationship have occurred within recent months which have resulted in extreme dysfunctional problems.

Description:
An outline prepared in June, 1974, for orientation and training of deputy public defenders was also used at a panel discussion among court appointed attorneys by a Deputy Public Defender assigned to the Juvenile Division. The outline discusses various methods for use in Juvenile disposition hearings. While much of this outline is devoted to general information of value to an attorney in juvenile defense work, there are several paragraphs illustrating

how to reduce the credibility of the Probation Officer's placement report. The outline contains statements which question the integrity, training, education and thoroughness of probation officers.

This outline has been widely circulated in the Probation Department and has infuriated probation officers throughout the County. They believe that such courtroom tactics severely weaken their effectiveness in subsequent relationships with the juvenile offender and his family and peers. While we recognize the right of defense counsel to establish the expertness of witnesses, the firmness of this strategy clearly has not helped juvenile court procedures. We do not believe that discrediting the deputy probation officer helps the client under his supervision, even though the public defender claims this strategy has precipitated modification of Probation Department procedures.

Several written communications have come to the audit team involving lower levels of management and their relationships with counterparts in other justice-related departments. The general tone of these letters is basically the problem of uncooperativeness, the failure to either grasp or respect the roles and duties of others, and a spirited aloofness.

Some correspondence at the top management level between the Public Defender and the Probation Department indicates a serious absence of professionality. In one letter, charges and countercharges dominate the tone of the exchange. The matters at issue have yet to be resolved satisfactorily.

RECOMMENDATIONS:

1. The department recognize and accept its role as a unit of County government, cooperating and sharing appropriate information and views with other departments, especially those involved in the justice system.

2. The department should be responsive to the leadership of the Board of Supervisors and other officers designated to assist them in carrying out their functions and responsibilities.

3. The department communicate with the Board of Supervisors as frequently and as candidly as necessary to provide full information regarding departmental needs and problems.

Chief Deputy Involvement in Personnel Administration

Findings:
The Chief Deputy Public Defender devotes a substantial amount of time, estimated as the overwhelming majority of every work day, to matters of personnel administration. This concentration on only one aspect of departmental affairs interferes with the ability of the Chief Deputy to devote significant time and effort to other management areas.

Description:
The personnel functions exercised by the Chief Deputy include the hiring decisions for new personnel, the rotation assignments of professional staff, rating and reviewing performance evaluations and appraisals of promotability, and extensive participation in various departmental in-service training programs. Generally, these activities, with the exception of a slightly diminished role in training, are almost exclusively handled by the Chief Deputy. While the placement of the personnel administration responsibility with the department head or his chief deputy is relatively common in the eight other counties contacted by the audit team, none are even one-fifth as large as Los Angeles County's Public Defender. In Los Angeles, this situation is apparently an historical extension of the practice for many years and is not a matter of aggrandizement by the incumbent. However, the spectacular growth of the department in recent years makes unsatisfactory the continuance of this arrangement.

RECOMMENDATIONS:

1. Divest the Chief Deputy of routine personnel functions which can better be performed by other professional managers and a trained personnel officer. This will be discussed in detail in a section on personnel administration.

2. Establish a new position of personnel officer at a level commensurate with the needs of a professional department and assign to it a full, comprehensive range of personnel functions.

3. Locate the personnel officer in Administrative Services, reporting to the Head, Administrative Services.

Juvenile Policy

Findings:
Unlike the adult courts, the Juvenile Court system is rife with hostility and tension. It is a highly complex, interrelated system with constantly evolving factors. The Public Defender's written policy of slowing down the system, along with the Public Defender's generally negative and defensive posture, add to the many problems the Juvenile Court system is experiencing. The Department has expressed a continuing interest in seeking better treatment services for juveniles, particularly girls and those with mental illness problems.

Description:
In an undated paper regarding right to treatment, the Public Defender's office states that "we are continually trying to make the system slow down and start paying attention to each youthful offender." Although the Public Defender denies that they have a policy of hearing every case, there is no doubt that Juvenile Division deputies take the vast majority

of their cases to hearing. After the District Attorney has presented his entire case and witnesses, the Public Defender presents no defense in about half the cases. This practice is wasteful of the time of the courts and other participating departments and of County funds. The Public Defender will not permit a child who admits that all allegations in a petition are true to make this admission in open court and thus avoid a hearing. The Public Defender feels that this policy represents the right of every child to have his day in court and face his accusers. Many commissioners, judges and Probation personnel have indicated that it is not in a child's best interest to encourage a child who acknowledges his guilt privately to deny the allegations in court on the chance that he might beat the case. They also pointed out that it is emotionally hard on many children to be publicly humiliated by their victim and witnesses. Contacts with other counties have indicated that Los Angeles County is unique in taking virtually all juveniles to hearing and in routinely advising juveniles not be admit to petitions.

The Department indicates that it has recently been successful in establishing regular weekly meetings with the Juvenile Court Presiding Judge and the Probation Department to review procedures and practices.

RECOMMENDATIONS:

1. That the Public Defender re-evaluate its policy and philosophy regarding juvenile offenders. That whether or not to go to hearing be evaluated in light of each individual case, statements of the juvenile, and his family situation.

2. That a philosophy of cooperation with, not hostility toward, the courts be strongly mandated by the Public Defender for his staff, with the public acknowledgment that a smoothly operating court benefits all juveniles and parents who come in contact with the system.

Grants and Contracts

Findings:
The Public Defender has no grant-funded or contract programs to augment or strengthen the department's level of service.

Description:
Many Los Angeles County departments and several Public Defender offices in other counties have made excellent use of grants and contracts to perform needed services as well as to augment and strengthen the array and level of services of their departments. Substantial sums have been available through the Law Enforcement Assistance Act, and various manpower programs such as P.E.P. and C.E.T.A. Other Public Defender offices have added training officers, interviewers, attorneys and para-legal staff by use of these means. None have reported any difficulties or interference with their

internal operations or professional discretion from the utilization of these and similar programs. Some counties have developed substantial work/study programs with law schools and universities as a method of enhancing their work force, attracting high quality personnel and relieving professional staff or workload pressures.

Los Angeles County Public Defender has not sought grant and contract programs because they believe such outside funded services would compromise their independence and jeopardize the integrity of the department's mission. In addition, the Department indicates that it has considered and investigated several grant possibilities but found either the objective or the mechanism to be inappropriate for its use. It also suggested that most County attention thus far has been directed toward programs which impact the entire County justice system. The audit team does not believe that this posture is legitimate as there is ample experience in the County and elsewhere to the contrary.

RECOMMENDATIONS:

1. That the department seek funding support from available and appropriate grant and contract opportunities to augment and strengthen its level of services.

2. That the department explore the possibilities of work/study programs for selected law students from local universities.

Administrative Instructions

Findings:
The department prides itself on its open, non-directed management style. It has no organized administrative procedures, no operating manuals and, it claims, virtually no policies. It takes the position that its staff are professionals, fully trained and qualified to practice law. An attorney, the department states, cannot direct another as to how to try a case/defend a client. As a result, we find a laissez-faire attitude by management which is both deceiving and contradictory. When management has a policy, it is announced, known and followed. When management chooses to not have a policy, it retreats behind professional practice principles and claims policies are inappropriate.

Description:
In practice, departmental executive and expanded staff meetings are held fairly regularly. The agenda for these meetings is open and subject matter ranges far and wide. These meetings are used as vehicles for the discussion of trends and developments, the sharing of insights and experiences, the provision of general information and the announcement of policies. We have analyzed the minutes, which are widely distributed within the department, for 1973, 1974 and part of 1975. Well over 500 policy and informational statements by various managers were made in the course of these meetings. Approximately 80 statements were of a policy nature.

In addition, memoranda from the department head, the chief deputy and the division chiefs are prepared and circulated as the need arises. These memoranda include information, policies and statements referred to as "guidelines." It is our impression that guidelines are policies which the department management believes will be more acceptable to its professional staff if they are less authoritarian in nature. The effect is the same.

Both the minutes and the memoranda are maintained in varying degrees of order by both management and staff. The quality of the retention system is in direct proportion to the filer's level of responsibility, degree of interest, and administrative skill.

RECOMMENDATIONS:

1. The department should establish an administrative manual to include policies and guidelines which in the past have emanated from staff meetings and memoranda.

2. The manual should be organized in a manner to facilitate use and reference.

3. The manual should be issued to every supervisor, available to every employee, and placed in every work location.

4. The manual should be designed to permit constant up-dating and revision with a minimum of effort and cost.

Department's Communications

Findings:
The department's communications and rapport with the Board of Supervisors historically have been most limited. In recent years, the department has deliberately avoided communicating with the Board, and declined to recognize the legitimate right of the Board to be fully informed about the actions of its department head and his staff.

Description:
In recent years, other than occasional letters responding to either inquiries from the Board or other situations of interest to the department, and a very few face-to-face meetings at Board instigation, there has been virtually no mutual exchange of views or positions between the department

and the Board. This situation has been modified somewhat in the past few months. The department cherishes its independence and what it characterizes as freedom from interference. The department's basic role in defending the indigent, and attempting to protect persons accused of crimes who cannot afford private counsel, is a difficult one at any time. There is substantial belief among those interviewed in other County justice system departments that the Public Defender exhibits a general attitude that meeting with other components of the justice system, discussing philosophies and programs, and alerting the Board to actions which the department believes it must take in good conscience and professional judgment, in some manner, compromises the department's integrity and independence. As a result, the Board has been surprised by several actions of the department in the areas of juvenile detention and the selection of jurors to name only two. The audit team's discussions with nine other counties indicate a unanimous disagreement with the posture of the Los Angeles County Public Defender. While each adamantly asserts his independence to invoke professional principles and insistence upon freedom from interference in client defense policies, they are united in their policy of keeping their Board of Supervisors fully informed of their actions and problems.

RECOMMENDATIONS:

1. Reducing the excessive involvement of top management in the details of departmental personnel administration, should free sufficient time for departmental executives to provide for better information exchange with other departments in the justice system. Therefore, departmental executives should be directed to more fully participate in joint activities and matters of mutual interest to the justice system.

2. The department should be directed to establish and maintain regular working relationships with the Board, and to inform the Board of its positions, activities and plans, which it believes in good conscience and in its professional judgment it must pursue, prior to taking action.

3. The department should be required to make a periodic accounting of its activities and achievements to the Board of Supervisors.

Relationships with Probation Department

Findings:
The department's working relationships with some probation officers and the Probation Department management, regarding juvenile court matters are unsatisfactory. This breakdown in effective working relationships has caused delays in juvenile court proceedings, loss of respect and confidence by the juvenile in the probation officer, and has emphasized the Gault-inspired adversary relationships in the juvenile court where the possibility of rehabilitation of the juvenile is seriously diminished.

Description:
Prior to the Gault decision several years ago, the probation officer exercised an exclusive role in dealing with the juvenile offender.

The Gault case introduced the concept of the juvenile having the right to legal defense, and removed the probation officer from his exclusive role.

Many Deputy Public Defenders generally believe that some probation officers do not act in the best interests of the juvenile as an individual but are primarily interested in getting the juvenile out of society. Consequently, the defenders actively insert themselves into the social aspects of the juvenile's life and essentially attempt to replace the role functions of the probation officer at the disposition hearing. The Public Defender cites the canon of ethics for criminal law which hold that an attorney fs duty bound to suggest alternatives as equally applicable to juvenile court. For example, in an attempt to avoid a juvenile's being placed, it is accepted practice to attempt to question the ability and the integrity of the probation officer on the stand. The Department firmly believes that the Probation Department has never fully accepted or understood the ramifications of the Gault decision. It also asserts that it has an obligation to lead out in seeking improved rehabilitation opportunities for juvenile offenders. On the other hand, Deputy Probation Officers believe they have the expertise to properly assess the needs of the juvenile and to evaluate courses of rehabilitation for the offender. They resent the tactics of the public defenders, believe they are extremely improper and state that the public defenders are not competent either to investigate or recommend rehabilitative measures. In response, the Public Defender believes that the Probation Department has made little effort to educate its staff as to the provisions of the Gault decision.

Out interviews have identified a widespread general belief that the Juvenile Court would be significantly strengthened if judges were assigned instead of commissioners and referees. Frequently comments were received to the effect that Juvenile Court is not highly regarded as a place to devote one's time, commissioners are constantly aware that their decisions are reviewed and frequently revised by a judge, as-needed referees depend upon judicial appointments and seriously lack sufficient continuity to exercise a firm role in juvenile proceedings.

These problems are cited as reasons for the increasingly strong role assumed by the public defenders--they are simply stepping into a vacuum.

Since the attention being given to the whole matter of juvenile justice is considerable at present, our recommendations are more in the nature of areas to consider than specific actions.

RECOMMENDATIONS:

1. Consideration should be given to removing the probation officer from the detention and adjudication hearings by divesting him of the responsibility of petition filing.

2. Petition filing should be the responsibility of a legal officer and three alternatives are worthy of consideration. These alternatives would all require legislative changes.

   a. District Attorney could file. This is the most frequently suggested alternative. It would clearly establish an adversary court which may be more in line with recent trends to utilize judges in lieu of commissioners in juvenile courts. District Attorneys would thus continue in their current prosecution role.

   b. A legal officer attached to the court could file. This would remove the probation officer but may raise questions of conflict of interest. This would remove the District Attorney from juvenile proceedings.

   c. A legal officer attached to the Probation Department could file. While the probation officer per se would not be directly involved, it is likely he would be suspect by the Public Defender. This legal officer would be qualified to present the case in court thereby replacing the District Attorney.

3. Studies currently in process of the Juvenile Justice System should consider means of permanently eliminating the use of as-needed referees in juvenile courts.

Professional Supervision

Findings:
The Public Defender exercises limited professional supervision over attorney personnel. Deputy Public Defenders are free to defend each case as they see fit, governed only by the ethics of the Bar.

Description:
Ethically a lawyer owes his client individual loyalty, and must maintain complete independence to exercise his professional judgment on behalf of the best interests of his client.

To foster this independence of his attorneys, the Public Defender exercises limited professional supervision over their actions. Deputy Public Defenders freely ask for advice from their supervisors or other deputies but are not formally ordered to take, or not to take, actions on behalf of their clients.

This "sink or swim" approach is the main source of job satisfaction named by Deputy Public Defenders who also state that this practice accelerates their development as criminal defense lawyers and enables them to maintain their own "styles."

In general this independence on the part of Deputy Public Defenders does not affect the operations of the court. However, our interviews of judges and prosecuting attorneys, revealed several instances where the actions of a single Deputy Public Defender disrupted the smooth operation of a court. For example, many judicial officers complained of several instances where a Deputy Public Defender apparently arbitrarily set all, or a disporportionately high percentage of his cases for trial. Even though the Department firmly believes that its actions are appropriate to the adequate defense of its clients, a deputy frequently does not have time to try all the cases he sets for trial. As a result, some cases are repeatedly continued, witnesses and victims are inconvenienced and occasionally discouraged, and the court operations are delayed.

This situation could be alleviated if the department would invoke professional supervision when required to protect the best interests of all its clients and to maintain the effectiveness of court procedures.

RECOMMENDATION:

That the Public Defender exercise professional supervision over the action of his deputies when required to protect the best interests of all clients and to facilitate the operation of the justice system.

Conflicts of Interest

Findings:
When a Public Defender declares a conflict of interest, the court appoints a private attorney to handle the case. In 1974 approximately $5,935,110 was paid to court appointed attorneys.

Description:
The following chart represents the total criminal indigency costs in 1974 for court-appointed and Public Defender attorneys.

	Superior Court	Municipal Court	Juvenile Court	Total
Court Appointed $	$2,199,177	$1,329,931	$2,406,002	$5,935,110
Court Appointed %	29.6%	19.7%	65.7%	33.3%
Public Defender $	$5,224,843	$5,409,924	$1,257,833	$11,892,600
Public Defender %	70.4%	80.3%	34.3%	66.7%
TOTAL	$7,424,020	$6,739,855	$3,663,835	$17,827,710

Clearly the most extensive use of court-appointed attorneys occurs in juvenile court. Undoubtedly the principal cause of this huge expenditure lies in the juvenile court's policy of not appointing a Deputy Public Defender for any defendants in multiple defendant cases. The court took this position in October, 1973, because the Public Defender was rarely ready when the court-appointed lawyers were, and the court objected to the expense of paying private attorneys to wait for the deputies. The Public Defender indicated its opposition to this policy from its inception--principally through memos to the juvenile court presiding judge and the Auditor-Controller questioning the legality of the court's actions.

The American Bar Association's canon of ethics states that: "It is unprofessional to represent conflicting interests ... a lawyer represents conflicting interests when, in behalf of one client it is his duty to contend for that which duty to another client requires him to oppose."

In criminal law a conflict can occur when: (1) the same lawyer (or law firm) represents two defendants arrested for the same crime, as the defense of one may consist of testimony against the other; (2) a defendant accused of a crime who, as a witness in another matter, is testifying against a client of the same firm. The attorney of the second client may attempt to impeach the witness' character and dependability while the attorney in the defendant's own trial will have the opposite goal.

The Public Defender has a duty to declare a conflict when such conflict is apparent to him even though it may not be apparent to the court. He has no duty to reveal the basis of this conflict to the court. The conflict may be actual or potential.

Various alternate solutions to this expensive problem come to mind:

A. Creation of a second Public Defender's office--
This would provide defense for an additional defendant on each multiple defendant case.

It would not resolve all the conflict cases as many have more than two defendants. Whether setting up a second, independent Public Defender would be cost-effective would require extensive study. At present no records are kept as to the number of cases such an office would handle.

B. The creation of a separate Juvenile Public Defender to defend most juveniles. The current Public Defender's office would continue to have a small juvenile division which would, in multi-juvenile cases, represent one of the minors not represented by the Juvenile Public Defender. In adult-juvenile cases the current conflict situation would not exist as the Juvenile Public Defender would be a separate office from the Public Defender.

C. Contract with a group of attorneys--it may be possible to develop a contract with a non-profit organization such as the Los Angeles County Bar Association for legal defense counsel. How many attorneys would be required, the fee management and related matters require further study.

Two bills have been introduced in the State Legislature to establish a State Public Defender. The County should support such legislation to enable the State to assume responsibility for client defense in conflict cases. This office could also assume responsibility for appeals.

RECOMMENDATIONS:

1. That the Public Defender develop and pursue a statistical reporting system which would provide such information as: reason for conflict, number of defendants, and whether they are juveniles or adults.

2. That the current Board-ordered CAO study of the feasibility of creating a second Public Defender be expanded to consider the creation of a Juvenile Public Defender office.

3. That the Department exercise close surveillance over declarations of conflict of interest, especially with newer deputies; and that each conflict be discussed with a supervisor to assure that an actual or potential conflict does, in fact, exist.

4. That the Public Defender expand its avenues of cooperative communication with the juvenile courts in order to develop a solution, in cooperation with the CAO, to the multiple juvenile defendant problem. The Public Defender should represent at least one minor in multiple defendant cases.

5. That the County support legislation to create a State Department of Public Defender to assume responsibility for conflict cases.

Court Appearances

Findings:
The department lacks a policy regarding a deputy making brief, simple court appearances for a fellow deputy. As a result, in some branches and areas, deputies will never appear for each other. As a consequence, witnesses, courtrooms, and defendants are inconvenienced by long waits for a particular Deputy Public Defender to appear.

Description:
The department believes that once a deputy is assigned to a case he has a moral and ethical obligation to be the only attorney ever to appear in court on that case. Judges have pointed out that private law partners frequently appear for each other at such routine procedures as requests for continuances, bail hearings, and trial settings. This is an accepted practice in the legal world and wholly ethical. While it is not recommended that deputies try one another's cases, simple appearances should not always require the assigned attorney.

RECOMMENDATION:

That a written policy be established indicating under what general circumstances a supervisor may permit a deputy to make a court appearance for a fellow deputy.

SCOPE AND CONDUCT OF ACTIVITIES

General Observations

To determine the level or quality of legal defense services provided by the Public Defender, the audit team interviewed judicial officers of all courts staffed by the Public Defender's office and representatives of the District Attorney and other prosecuting agencies.

Without exception, the Public Defender's trial deputies are credited with representing their clients in an outstanding manner. The most frequently heard comment by other legally trained persons is to the effect that they would rather have a Public Defender as counsel in a criminal case than any private attorney. This reflects the interest, enthusiasm, and dedication of the Public Defender and his staff in keeping abreast of the latest developments in the law, both on their own and through office training sessions. The quality has its price--seeking every conceivable avenue of defense, searching for every weakness in the prosecution's argument, trying every motion and maneuver known to criminal law, in short, anything legal and ethical to win. The honest appraisal of this situation is that it has been fostered by the Appellate Courts which have consistently reversed decisions and severely chastised attorneys for failing to do a thorough job of representation.

As a result, the Public Defender is probably over-cautious and over-thorough. There may be room for adjusting the extremities of the Public Defender's trial posture resulting from this concern, but the audit team simply cites it as a costly problem, and one which the judiciary and the legal profession need to resolve.

The department does, however, have a tendency to reach out for service levels somewhat beyond those mandated by statute particularly in civil and appellate representations. The Department does not believe that sound financial elegibility criteria can be developed which would stand up under court consideration. Therefore, it has not endeavored to develop any general guidelines for its staff even though such action could reduce its caseload and increase its revenue.

Judicial rulings on conflict of interest have had a tremendous financial impact on defense costs.

Defense Continuity

Findings:
Attorneys agree that ideally each defendant should be represented by a single defense attorney. Since this is not possible by the Public Defender in all courts, the continuity of defense representation varies, depending largely on the staffing or work assignment method of the deputy in charge.

Description:
Logically the optimum court procedure is one in which all stages of a case take place before one judicial officer with the same prosecuting attorney and the same defense attorney present at all stages of the court proceeding, so that all court participants are familiar with the case. Because of the nature of the defendant-defense attorney relationship, the Public Defender deputies state that maintaining continuity of defense representation is extremely important. Due to heavy workload and logistical or other constraints, the above situation occurs in relatively few courts in Los Angeles County.

Most judicial districts use varying degrees of specialization in calendaring different stages of court proceedings to the judicial officers and courtrooms available. Generally, one or more courts specialize in arraignments, with trials then set by the arraigning court either directly to one of several trial courts or to a master calendar trial court which then refers the case to a specific trial court on the day of the trial.

Under the above conditions, the degree to which Deputy Public Defenders maintain continuity of representation of their clients varies from court to court. In some courts a defendant may initially be interviewed by one Deputy; represented at arraignment by a second; and interviewed and the case prepared and presented at trial by a third. Other offices successfully attempt to minimize potential disruptions in the client-attorney relationship by having the same deputy who initially interviewed the defendant prior to arraignment (and who possibly represented the client in court at the arraignment) also prepare and present the case at trial.

How the Public Defender staffs the courts, and the resultant degree with which each deputy is able to continue representation on a given case, is apparently determined by the deputy in charge at each office. Although other factors may affect the staffing pattern, such as the relative experience of the

deputies, training considerations, and court workload, the deputies in charge at Public Defender offices exhibit varying degrees of concern and effectiveness in maintaining continuity of representation of clients.

Maintaining continuity of defense representation is the defense attorney's ideal situation and can apparently be increased in some Public Defender offices by changes in the deputy staffing pattern.

RECOMMENDATION:

The Public Defender examine the staffing pattern at each office and realign work assignments as appropriate to increase the continuity of defense representation.

Financial Eligibility

Findings:
The determination of who qualifies for the Public Defender services is left to the discretion of each individual Deputy Public Defender. The department supplies no guidelines to its deputies, but instead relies on each Deputy's individual interpretation of the broad provisions of the law regarding indigency.

In the adult courts, the department requires deputies to always make oral inquiries as to a defendant's financial situation. They are to obtain a written statement when time permits. The form, "Defendant's Financial State," is to be completed when feasible and always by defendants on bail and charged with one or more felonies.

In the Juvenile Division, the Public Defender considers all juveniles automatically eligible and conducts no financial screening of the family. It is the Department's position that it is the court's responsibility to determine the family's financial eligibility prior to the appointment of the Public Defender to represent the juvenile.

Description:
The question of whether or not proper scrutiny is given to a defendant's ability to pay is an old one. In general, the solutions are to either have Deputy Public Defenders spend more time questioning defendants or to invoke a separate class of employees to make these determinations. The cost of having a separate investigation unit in each courthouse to do intensive investigations would be high and it is questionable that they would be able to find a

great deal of hidden assets for most defendants. It should be pointed out that welfare eligibility workers can only investigate between seven and fifteen cases per week as to eligibility, and even then have no success in uncovering income gleaned from illegal activities. (A common complaint of judges being that bookies and pimps who clearly have money are getting free Public Defender services.) The department states that it spot checks about one of each 25 Financial Eligibility forms for accuracy and legitimacy. The form needs to be strengthened, especially by the addition of a penalty of perjury statement.

While the department has a written policy that deputies must assess financial eligibility, it provides no guidelines as to what in fact constitutes financial eligibility. The department feels that the In re Smiley decision in 1967, defining financial eligibility as the inability to hire an attorney, precludes their establishing guidelines. As a consequence, some deputies consider a man earning $200 a week with a wife and child eligible, while others do not. Some deputies will not represent a defendant who has an expensive, if unpaid for, car--others will. There are varying opinions as to the effect outstanding bills have on an individual's eligibility. As a result, a defendant's entitlement to free legal representation depends on which deputy is assigned to his case. By contrast certain California counties provide their deputy public defenders with financial eligibility guidelines. A copy of these guidelines is attached to this report (Appendix C).

The Juvenile Division's policy is that irrespective of the parents' financial circumstances, the child is without funds and is automatically entitled to counsel. They see the problem in juvenile as unique because, as counsel to the child, they are free to act solely on the child's behalf without regard to the parents' desire for the child.

RECOMMENDATIONS:

1. That general guidelines as to income, dependents, assets, and other relevant information be published by the department to be used by deputies in assessing eligibility. While we recognize that an uncompromising policy in the area is not feasible, we believe that the department has a duty to its clients, its deputies, and the taxpaying public to establish reasonable and appropriate standards, similar to those shown in Appendix C, indicating whom it will and will not represent.

2. That specific maximum levels of income and assets be set for service eligibility which would require supervisory approval to exceed. We recognize that in some instances, due to the press of work assignments, such supervisory review would have to be after-the-fact.

3. When these policies are propagated, they be the subject matter of department-wide training sessions.

4. That deputies in the Juvenile Division obtain Financial Statements from parents and advise those with means to obtain counsel for their children. The parents should be informed that they may be assessed for defense costs if they refuse to obtain a private attorney for their child and the Public Defender is appointed by the court.

5. That the form "Defendant's Financial State" include a signed statement indicating that the information supplied is correct and the statements true, under penalty of perjury.

Reimbursement of Public Defender Costs

Findings:
Los Angeles County lacks an organized, definitive program for reimbursement of defense costs incurred by recipients of Public Defender and court-appointed counsel services. Although the law provides for the court to assess such costs, the lack of a systematic method of reimbursement and collection has resulted in a reluctance on the part of many courts to make these assessments.

Description:
Penal Code Section 987.8 specifies that upon conclusion of the criminal proceedings the court shall make a determination as to an indigent's ability to repay all or a portion of the cost of counsel and, if the defendant has the present ability to pay, the court shall order him to pay in any installments and manner it believes reasonable. Similarly, Sections 903 and 903.1 of the Welfare and Institutions Code allow courts to assess parents for the defense costs of their children.

The Public Defender keeps track of its time spent on each case and hourly rates for Public Defender's time have been established by the Auditor.

Public Defender policy, as disseminated in their staff meeting minutes, indicates complete cooperation with the process. Deputies are to record their time and provide it to the court when so ordered. They are not to represent their clients in the hearings.

Our findings are that Deputy Public Defenders are instructed to keep time records and to cooperate with the courts. Compared to other counties, Los Angeles courts have not made a serious effort to assess defense costs:

County	Amount Collected	Year
Los Angeles	$37,547	1973
San Diego	127,962	1972-73
Santa Clara	20,429	1972-73
Ventura	50,000	July-Dec., 1974

We have found that many, if not most, judges do not assess costs or hold reimbursement hearings. These judges have stated that they lack time, do not know what the procedures are, do not see it as worth the effort, and/or believe guidelines are needed as to what other courts and judges are considering adequate income. Other judges routinely assess costs and feel strongly that all courts should do likewise. No efforts whatsoever are made in juvenile court to collect defense costs from parents.

A moratorium on all collections was called in late 1973 as an appeal case was pending regarding the constitutionality of the law. The law was upheld in August 1974 and the process is gearing up again. The Bureau of Resources and Collections was collecting about $4,000 a month prior to the moratorium. Since BRC receives court orders, they have considerable latitude in attaching wages. BRC states they have had complete cooperation from the Los Angeles Superior Court District, but there has been some difficulty coordinating with the 25 Municipal Court Districts. BRC believes it could collect a considerable amount if the courts would enforce PC 987.8 and forward the proper paperwork to BRC.

The problem is particularly extreme in juvenile where no costs have ever been assessed. Public Defender considers all juveniles automatically eligible and conducts no financial screening of the family. Many parents have resources and/or employment and would be able to contribute something to their children's legal defense costs.

This subject has been brought up numerous times by various committees, Grand Jurys, audits and other groups concerned with conserving County funds. A committee consisting of representatives of the court, Chief Administrative Office, Bureau of Resources and Collections and Public Defender staff was pursuing this matter last year, but there have been no meetings since November, 1974. This study effort has been resumed as an outgrowth of this audit and we are working to develop procedures for use by all courts. We expect to complete this effort by September, 1975.

RECOMMENDATIONS:

1. That in connection with the Board's order of March 18, 1975, the CAO be instructed to continue working with members of the Superior and Municipal Courts, the Public Defender's office, and the Bureau of Resources and Collections, the Auditor-Controller and County Counsel to develop procedures and forms for reimbursement and disseminate this information to all critical agencies in the County.

2. That the Public Defender obtain financial statements from the parents of juveniles, and in cases where parents with means refuse to obtain counsel for their children and the Public Defender must provide counsel, the courts order the parents to pay the Public Defender's costs.

Appellate Services

Findings:
Los Angeles County's involvement in appeals is considerably more extensive than any of the other nine counties visited by the audit team. Whereas the other counties prefer to let the Court of Appeals appoint counsel at State expense, Los Angeles County has 10 attorneys and 3.5 secretaries working full time doing appellate work. The 1974-75 estimated work load for the Appellate Division indicates that 54% is devoted to appeals and 46% to writs, the latter being an on-going responsibility irrespective of the amount of appeal activity.

Description:
In 1974, 68 felony appeals were filed, and 74 appeals lost at the Appellate Court level were carried to the State Supreme Court. In addition to handling felony appellate matters, the Appellate Division also handles misdemeanor appeals, pre-trial writs, and dispenses appellate law information to the rest of the office both orally and by detailed memos.

The office keeps no records as to the number of appeals won and lost. The Head Deputy of the Appellate Division estimates that they win roughly 20% of their felony appeals--a record he guesses to be slightly better than that of private counsel. He further stated that the Public Defender wins most of the misdemeanor appeals.

Government Code 27706 gives the Public Defender the authority to appeal only those cases that have a reasonable chance of modification or reversal. All other Public Defender clients who wish to appeal Superior Court convictions are assisted by the trial deputy in filing requests with the Court of Appeals. Private counsel is then appointed at State expense.

All individuals convicted in Superior (including Juvenile) Court have the right to appeal. If his attorney does not file, a defendant can file pro per by writing to the Court of Appeals stating his desire to appeal.

If an individual is convicted of a misdemeanor, the appeal is first heard at the Superior Court level. An individual unable to employ counsel, and not represented by the Public Defender, is given a court appointed counsel paid from the County's Superior Court budget. If he wishes to pursue his appeal, the case follows the route of felony appeals through the State Court of Appeals.

Most other counties do very little if any appellate work. Certainly none devote the staff and time to appeals that Los Angeles does. The Public Defender has pointed out that the Supreme Court has favored attorney continuity in both trial and appeal procedures.

RECOMMENDATIONS:

1. The Public Defender continue to exercise close surveillance over potential appeal cases in order to make certain that only those cases are pursued which have a clear opportunity for reversal.

2. As indicated in our discussion under conflicts of interest, that the County support legislation to create a State Department of Public Defender to assume responsibility for appellate matters.

Legislative Activities

Findings:

The Public Defender's legislative research efforts on behalf of the County's legislative program are minimally adequate. In the past, the involvement of deputy public defenders in legislative appearances have been a source of annoyance to County officials. The Departments contends that these legislative appearances have been by individuals, and not by departmental assignment. However, since the Department has a written directive concerning legislative appearances by its staff which requires that a request for a leave of absence be submitted in advance, we conclude the department is informed. The department in the past has made it a practice to not inform County management in advance of such legislative appearances.

Description:
In recent months, the Public Defender's analysis of legislation, accomplished at the request of the Chief Administrative Office, has been adequate and an improvement over earlier performance. There is a tendency, however, to brevity and to supplying a minimum amount of background and insight. Such information is supplied only upon specific request. The office clearly will disagree from time-to-time with the County's legislative position on selected bills. In the past, deputy public defenders have provided testimony on various bills before the State Legislature. The department has usually made certain that such testimony was offered on the employee's own time and that he did not represent the department or the County. Often, such representations were made on behalf of the California Public Defenders Association. In one recent instance, however, the department reported that a deputy public defender had indicated that he offered testimony to a legislative committee on a police information file as a representative of the California Public Defenders Association. Our investigation revealed that the Association neither authorized nor directed such representation nor did its Board of Directors consider the matter about which testimony was presented.

It is our conclusion that expert testimony offered in the name of a professional association is in fact and in large measure, an outgrowth of the individual's professional work experience with the County, and frequently presents views which are contrary to those of the County. The department's policy on legislative representation and leaves of absence for such appearances is ambiguous and contradictory and should be revised and clarified. On April 29, 1975, the Board authorized the departmental chairman to approve legislative travel for the Public Defender when information and testimony is requested by the Legislature.

RECOMMENDATIONS:

1. The department should prepare a clear and consistent policy with respect to leaves of absence for purposes of legislative representation.

2. The County should request the California Public Defender's Association to present in advance its requests for legislative representation involving County employees.

STAFFING

General Observations

The Public Defender staff workload is heavy in every office of the department. The audit team frequently verified by actual observation and confirming interviews with other justice system departments that overtime work is commonplace. Numerous courts are open until 6:00 p.m., and several even beyond. In some locales, lunch periods are routinely skipped. Jail interviews and field investigations can occur at all hours and on weekends. The deputy public defenders, however, seem to take this situation in stride and take the stance that they are professionals and will put forth whatever effort is required to get the job done. While we commend this attitude, we note that in some offices it is an unreasonable burden which the department molifies by frequent rotation.

Variations in court management procedures impose workload differences that are beyond the scope and control of the Public Defender. Policies of the District Attorney's office introduce additional workload variables. Therefore, while the Public Defender shys away from uniformity and consistency, it is recognized that it may be an inevitable reaction under the circumstances. Nevertheless, the Public Defender should exercise as much initiative and leadership as these varying conditions permit. Stability and strength in one element of the system will have a positive effect on the entire system.

Workload and Statistics

Findings:
While statistics maintained by the department are limited in both variety and scope, there is considerable indication that there are significant variations in workload among branch and area offices. Departmental management has exercised its judgment in utilizing its personnel resources to meet workload demands. This practice results in staff assignments differing in large order from the staffing formula in the budget.

Description:
Every department is expected to manage its resources and no criticism is intended of the Public Defender in this regard. However, the department has not accepted the fact that its management has exercised its judgment with respect to workload demand which, in effect, is reassigning staff to meet workload. Management is deciding that individual cases in varying locations require more or less staff than

is budgeted for those locations. Management, therefore, is judgmentally applying weighting criteria to workload and acting accordingly. While sometimes such decisions are in response to the "squeeky wheel," in fact judgments do occur. We recognize that measuring professional staff is most difficult as is articulating caseload weighting. However, we believe that a work systems study would result in significant procedural improvements. A considerable amount of work has been accomplished in this area both in California and elsewhere in the United States.

The only regular report kept by the department is a monthly count of new cases/proceedings. They do not report or keep track of dispositions, trials, verdicts or other workload variables. As a result, it is not possible to compare different branch performances and workload; Los Angeles County to other counties; Public Defender performance to overall court performance; and departmental activities from year to year.

Every other county visited by the audit team keeps statistics and prepares detailed annual reports. These statistics include the number of trials, types of trials, pleas, verdicts, charges, etc. The only statistics of this type available for use by the Los Angeles Public Defender are two-year old statistics supplied by the State Bureau of Criminal Statistics and the current Superior Court statistics which do not differentiate between the Public Defender and private counsel.

RECOMMENDATIONS:

1. That the department be instructed to conduct, in cooperation with the Chief Administrative Office, work system studies and develop systematic procedures for the department's operations, including its professional staff.

2. That the department initiate a system of statistical reporting that will provide management with the data for use in planning and assignment. Data collected should be disseminated to staff monthly and should include, but not be limited to, the number and type of proceedings initiated; pleas; dismissals; court, jury and transcript trials; verdicts; diversions; conflicts; motions; etc.

Clerical Services

Findings:
Many Public Defender offices lack adequate clerical support which reduces attorney efficiency and inconveniences their clients.

Description:
Some of the Public Defender offices have no full-time clerical staffing. All Public Defender offices serving Superior Courts have some clerical support staff.

Public Defender offices lacking clerical staff present problems both in terms of attorney efficiency and services to the public. Deputy Public Defenders must perform clerical functions--any record-keeping or filing; handwritten motions (if acceptable by the court) and letters to defendants, witnesses, or others; answering telephone calls and making appointments--to the detriment of their efficiency as lawyers. When the deputies are in court, which is generally most of the day, no one is available in their office to answer questions, receive clients and other callers, or take telephone messages.

Some of the Public Defender offices currently lacking any clerical support do not have the clerical workload to justify the full-time assignment of a position. Such offices could be provided part-time clerical services by such means as a floating clerical pool serving many Public Defender offices as workload requires. A systems study of departmental clerical procedures would identify workload priorities and suggest means of coping with this workload demand.

RECOMMENDATIONS:

1. The Public Defender assign existing clerical personnel on a part-time basis to those offices without clerical support, as feasible.

2. The department should institute a work systems study of clerical services, with the assistance of the Chief Administrative Office, to improve their utilization of resources and to determine clerical staffing requirements.

Attorney Staffing

Findings:
The current budgeted level of Public Defender attorney staffing is adequate, but minimal, in all courts except the Superior Court's juvenile function. In Juvenile, judicial officers are appointing private counsel at greater cost to the County because of the non-availability of Deputy Public Defenders.

Description:
The audit team was not professionally qualified to fully evaluate the competence of Deputy Public Defenders nor the adequacy of deputy staffing, except on the grossest basis through observation and interview of judicial officers.

However, our observations and the frequent comments of judicial officers, prosecuting agencies, and departmental personnel indicate the following:

--Because of high caseload volume, Deputy Public Defenders commonly questioned the adequacy of the defense representation they were providing, based on the ethics of their profession. While no deputy stated he believed he was not now doing a competent job, some felt that quality was becoming marginal.

--Judicial officers consistently praised the quality of defense representation provided by Deputy Public Defenders. This is significant because judicial officers act as a "check" on the performance of defense attorneys being able to declare a mistrial if in their opinion the defendant is not receiving competent legal services from his attorney.

--Because there is insufficient Public Defender staff in Juvenile Courts, the judicial officers are appointing private counsel in lieu of Public Defenders, in all cases at greater cost to the County. Total County expenditures would be reduced if additional Public Defender staff were provided in Juvenile.

From these findings, and in the absence of work systems information, we conclude that the current budgeted level of Deputy Public Defender staffing is adequate but minimal, except for the Juvenile Court function. Additional attorney positions for juvenile defense functions are included in my 1975-76 budget recommendations.

RECOMMENDATION:

The current budgeted level of attorney staffing be augmented by additional positions for the Juvenile Court.

Investigator-Attorney Ratio

Findings:
Compared with other counties, the Public Defender has relatively few investigators to serve the attorneys. Most investigative resources are devoted to felony cases, with virtually no investigators available for misdemeanor cases in some outlying judicial districts.

Description:
The Public Defender's Investigation Division has 55 budgeted positions, including 3 stenographic, to serve approximately 400 attorneys. Most of the investigative resources are devoted to Superior Court actions, either felonies, juvenile, or mental illness. Investigative services are generally not utilized on most misdemeanor cases.

An investigator's time is spent conferring with attorneys, obtaining financial data from clients, delivering documents, and performing actual case investigations (interviewing witnesses, visiting the scene of the alleged crime, etc.). It is possible that some of the above functions could be performed by less highly trained personnel, thereby freeing investigators for actual investigative duties.

The attorney to investigator ratio of approximately 8:1 is relatively high compared to the other eight counties contacted. One county was comparable with 16 attorneys served by 2 investigators while the other 7 had attorney to investigator ratios ranging from 5.3:1 to 3.5:1. The relative shortage of investigative staff in Los Angeles is reflected in comments made to the audit team by some Deputy Public Defenders. However, even with the relative shortage of investigative personnel, the Public Defender is doing a competent job of defense representation.

RECOMMENDATION:

Instruct the Public Defender to conduct a work systems study with the assistance of the Chief Administrative Office to determine the optimum utilization of investigative resources and to determine investigator staffing requirements.

PERSONNEL ADMINISTRATION

General Observations

The audit team has been genuinely impressed with the dedication and high morale of the department's staff. Virtually without exception, the Public Defender deputies, the investigators and the administrative/clerical employees like their work and the department. The general orientation of the department is akin to that of a private law firm, and this has great appeal to the attorneys. The most frequent comment describes the situation as being the same as private practice without the office operation concerns. They practice law, virtually without interference in trial conduct or strategy, while being provided office space, investigative and clerical staff, and a pay level about which we heard almost no complaints.

There is some considerable concern about promotional opportunities which should intensity in the future if the leveling in staff numbers continues. In the sixties, spectacular growth made numerous promotional positions available. Those higher level positions are now filled and recent experience indicates that there will be four to five applicants for every promotional vacancy. Numbers in the magnitude of 125 candidiates for 25-35 positions have been frequent in recent months. The retention of highly qualified and experienced trial defense attorneys could be a problem in the future.

The department has a highly regarded training program geared to improving attorney expertise in broad areas of criminal defense. It is not as uniform or as conveniently available as is necessary, however, and this problem should be resolved.

Performance Evaluations

Findings:
A review of the performance evaluations revealed that over 90% of the evaluations did not have the employee's signature. While signing is a recommended, but not required, practice it is a valuable management procedure. With the exception of occasional perfunctory comments, the majority of the Competent evaluations contain no comments at all. Review of the individual personnel files revealed many instances where performance evaluations have not been completed for the calendar year.

Description:
Although it has been the practice of the department to complete performance evaluations at the beginning of each calendar year, the evaluation period has recently been changed to the employee's anniversary date.

Until recently, the secretary to the Head, Administrative Services, maintained performance evaluation control sheets for the calendar year. This responsibility has now been placed with the personnel-payroll section which has always had responsibility for other personnel controls.

The recent change to anniversary due dates should result in more timely filing of evaluations since supervisors will complete them as they fall due throughout the year rather than having to prepare them all at once.

In the legal and investigative series there is a general policy of not completing the comment section of a performance evaluation unless it is an outstanding, unsatisfactory, or improvement needed evaluation. The department's position is that their supervisors provide constant feedback to the employee as to the level of performance, therefore a written statement is unnecessary. However, in a questionnaire distributed by the Department of Personnel auditor, 49% of the individuals questioned indicated that their supervisors rarely or never reviewed their performance on an informal basis. Our interviews of approximately 200 Public Defender staff would confirm that 49% is a minimum figure.

The lack of comments on the evaluation form is exacerbated by the fact that the standard Countywide performance evaluation form is not appropriate for the Deputy Public Defender series. It contains no rating of such professional skills as legal knowledge, legal reasoning, judgment, and other major duties and functions of the job assignment. In addition to having no written comments and using an inadequate form, the evaluation is not signed--an indication that it was not discussed with the employee. Our interviews confirmed that this is standard practice. Although not a legal requirement, it is sound management practice to have the employee sign the performance evaluation. A signature indicates that the employee discussed his performance with the supervisor when he received the evaluation.

RECOMMENDATIONS:

1. That the department control evaluations more closely to insure that all employees are evaluated no less frequently than once a year.

2. That as long as the Countywide evaluation form is used, the supervisors utilize the comments section to describe the employee's investigative or legal abilities.

3. That the department develop a specialized evaluation form for their lawyers and investigators, or consider using the County's attorney performance evaluation form currently used by the District Attorney's Office (See Appendix B).

4. That the department adopt a policy of having the supervisor discuss evaluations with the employee and having the employee sign the evaluation.

Appraisals of Promotability

Findings:
The department lacks a definite procedure for processing and completing appraisals of promotability.

Description:
Many individuals interviewed expressed dissatisfaction with the department's appraisal of promotability practices. There is considerable confusion over who actually makes the determination. In many cases it is apparent that the Chief Deputy assigns the final score for such positions as Deputy Public Defender III and IV. Some concern was indicated to the auditors that this practice may give an unfair advantage to those deputies assigned to the Criminal Courts Building. The auditors received various conflicting descriptions of how the procedure worked. Some individuals indicated that all head deputies discuss the candidates in a group appraisal format and arrive at a single score. Others stated their belief that several recommended scores are given to the Chief Deputy who assigns the final rating. Still others indicated that head deputies only make recommendations to their division chiefs, and all discussion and rating occurs at the division chief level and above.

A review of appraisal of promotability files by the Department of Personnel auditor revealed a lack of significant documentation to justify promotability scores. The department uses the standard Countywide form but makes no use of the "remarks" section, nor does it use any other means to describe in writing the reasoning supporting the numerical score.

RECOMMENDATIONS:

1. That the department develop and distribute a written procedure as to the role of each supervisory level in the Appraisal of Promotability process.

2. That the department utilize the formal group appraisal process including consensus rating recommendations to the extent possible.

3. That some written documentation be provided to support appraisal of promotability scores.

Personnel Policies Manual

Findings:
The department has no manual of personnel policies. Personnel policies and procedures are found in various file folders and staff meeting minutes. Most policies and procedures are issued in memo form and are generally either reactions to a problem or reminders of existing departmental policies. These policies are communicated via staff meetings to be disseminated to the rest of the department through the supervisor.

Description:
Individuals questioned have indicated that much information is either not disseminated properly or is not clearly conveyed. For example, when questioned about grievances, 45% stated they were not aware that a formal grievance procedure existed in the department.

Although personnel policies and procedures exist, they are not accessible and are not systematically catalogued or codified. The only source of information is the Head, Administrative Services, or the Chief Deputy.

Elsewhere in this report, the need for a policies and procedures operating manual is discussed. A portion of that manual should devote itself to personnel.

Mileage claiming, overtime, evaluations, job descriptions and appeal procedures are a few of the areas of interest to employees which should be included in a policy manual.

RECOMMENDATIONS:

1. The department should establish a personnel policies manual designed to permit constant updating and revision with a minimum of effort and cost.

2. Staff meeting minutes, memos, and other sources of policies, organized in a manner to facilitate use and reference, should be incorporated in the personnel policies manual.

3. This manual should be issued to every supervisor, available to every employee, and placed in every work location.

Hiring and Promotion Practices

Findings:
The department in recent times has had an abundance of candidates for both entry and promotional professional positions. There is a scarcity of affirmative action candidates.

Description:
In 1974, 486 individuals took the Deputy Public Defender I examination and only 45 were hired. This differential indicates that the department was able to use considerable discretion in picking the best candidates. Of the 45 hired, ten (22%) were of racial minorities. Of the 15 law clerks hired for the 1975 summer, five are minorities and five are women.

Although the department is striving to reach affirmative action goals, they are hampered by difficulties in retaining minority members at the professional levels due to highly competitive offers from private law firms. In addition, the Department of Personnel feels that although the department uses the General Action Plan Format suggested by Personnel, this plan is inadequate because it does not include specific goals and timetables. Promotional opportunities are decreasing above the Deputy Public Defender IV level. There is very little turnover in the few administrative positions in the department. Of the 16 positions at the Head Deputy level and above, one is filled by a minority person and none are filled by women.

RECOMMENDATION:

That the department continue in its effort to recruit minorities and that it establish realistic goals and timetables for an effective affirmative action program.

Orientation Training

Findings:
Although the department has considerable on-going training for its attorneys, it has virtually no orientation program for any of its newly-hired attorney personnel, or non-professional staff.

Description:
Many judges complained to the audit team that law schools' new graduates are not adequately prepared. In addition, new employees in all classifications are given virtually no general orientation to the department and the County as a whole.

It was learned that the Chief Deputy used to give a history of the Public Defender's office as part of an overall orientation program. However, this practice has ceased. There is currently no systematic training program or orientation program for the clerical or non-legal positions. The "training" consists of on-the-job training by the immediate supervisors.

RECOMMENDATIONS:

1. That the department provide an overall departmental orientation program, complete with an orientation manual to all new employees.

2. That the department design appropriate training programs for its non-professional staff.

ADMINISTRATIVE AND BUDGETARY CONTROLS

General Observations

The department's budget process and expenditure controls are highly centralized and consequently generally meet accepted standards of accountability. Over-expenditures are rare and in past years have occurred only in response to emergent situations which were fully known to the Board. Prior to the inception of this audit, middle management was virtually oblivious to both budget and expenditure programs and this contributes to the feeling of "no responsibility" for them. Statistics for management information on performance and effectiveness are minimal. As a consequence, we found some managers maintaining their own data systems--crude and of modest utility because of their constricted area of applicability. The payroll timekeeping system needs substantial revision as it lends itself to error and abuse in its present form. There is a wide variation in the adequacy of facilities--ranging from excellent to extremely poor. Branch chiefs lack basic informational tools and involvement to manage effectively. Some of these same managers have recognized the need for organization and have developed their own administrative instruction and policy file or handbook.

Time Reporting

Findings:
The department maintains a negative time reporting system which involves reporting exceptions rather than time worked.

Description:
Time records are prepared and maintained by the payroll unit in departmental headquarters. Individual employees do not prepare time sheets and, consequently, supervisors have nothing positive to review and approve. All planned and unplanned absences are reported in writing. A report form is prepared by his supervisor's secretary for the absent employee, and signed by him either before he leaves or upon his return. These reports are also signed by the individual's supervisor. Every Friday, if the employee has not returned to sign his report, the unsigned report is sent downtown and controlled for eventual employee signature. Unexpected absences on the last two days of pay periods are telephoned in and followed up in writing.

The time reporting system for the department is unduly loose and, while the audit did not disclose abuses or an unreasonable number of errors, the present practice lends itself to abuse. It is an uncontrollable system in a supervisorial sense. The supervisor does not have a positive time report to correlate with the absence report.

RECOMMENDATIONS:

The department should establish a positive time reporting system for its entire staff which requires the preparation and signing of time reports by each employee, and review and approval by the supervisor.

Expenditure Controls

Findings:
The Public Defender's expenditure controls are highly centralized and adequate. The budget process is also centralized but should involve departmental middle management. Departmental procedures relating to permittee mileage reimbursement, overtime, and petty cash are under review by the Auditor-Controller.

Description:
The present Head, Administrative Services, Public Defender, supervises a staff of 36 administrative, accounting, payroll, personnel, clerical, and stenographic personnel providing support services to the department in the areas of budget preparation, expenditure control and other related administrative activities.

Decisions in the department's budget process and budget negotiations with the Chief Administrative Office are made by the Head, Administrative Services, the Chief Deputy, and the Public Defender from input from the branch offices and other functions and divisions in the department. Because each judicial district operates autonomously and presents different operational characteristics and problems, middle management personnel should be more involved in the actual budget process. It would be beneficial for the CAO budget analyst to discuss the departmental budget request with the personnel who are directly responsible for the activity in question, as well as with the central departmental administration. Middle management's direct involvement in the budget process with the CAO budget analyst would also increase their understanding of County operations and the budgetary problems facing the Board of Supervisors. It is noted that during the course of the management audit the department initiated budget discussions among its middle managers and that the CAO budget analyst had greater direct contact with departmental branch and area offices.

From a budget control standpoint, the department's use of permittee mileage reimbursement, overtime (by investigators and clerical personnel), and petty cash have proven adequate. The Auditor-Controller is completing a detailed procedural and fiscal audit of departmental activities and will report any significant findings to your Board.

RECOMMENDATIONS:

1. Public Defender middle management should participate meaningfully in the identification of budgetary needs and the preparation of the department's budget request.

2. Public Defender staff participation in budget negotiations with the Chief Administrative Office should be expanded to include middle management personnel.

Space Allocation

Findings:
The Public Defender's space allocation and arrangement in most Municipal Court facilities is inadequate and should be upgraded.

Description:
In many Municipal Courts the Public Defender occupies space that at best can be described as inadequate. Most Municipal Court facilities were designed prior to the 1965 legislation requiring Public Defender representation of misdemeanors so these facilities did not have space allocated for the department. Generally, the space occupied by the Public Defender in these facilities can be described as cramped, with no storage or library space, no provision for the privacy needed by an attorney and his client, and an inadequate waiting area.

As his staff has expanded the Public Defender has requested the provision of additional space but generally there is no vacant space available in the older court facilities. As a result, space not in the court facility has been provided on several occasions. The newest court facilities have been designed with sufficient space for the current needs of the Public Defender and some have room for expansion.

RECOMMENDATION:

The Public Defender, Chief Administrative Office, and the Department of Facilities continue the up-grading of Public Defender space, as feasible.

Correspondence Quality

Findings:
The Public Defender's written correspondence to other County agencies can be improved.

Description:
The audit team has reviewed Public Defender's budget requests, requests for additional space, memos to the Board of Supervisors and other correspondence and found that these documents are almost universally deficient in presenting the department's position.

Budget requests generally lack thorough justification and documentation. Public Defender budget requests historically illustrate the "incremental approach" by enumerating the requested staffing additions with only the briefest justification. To insure that the Public Defender continues to receive the budgetary resources necessary to provide his services, it would be to his and the County's benefit to improve his budget request by including service and funding priorities, workload analysis and accomplishments of current budgeted staff, alternate means of accomplishing program objectives, objectives for the next fiscal year and the ramifications if the requested resources were not available or provided.

Public Defender space requests could also be improved and the resultant chances of their acquiring the requested space increased, if relevant justification were developed by the department. For instance, space requests should include the service problems, operational inefficiencies, and ramifications of continuing in present space and resultant benefits from improving the space allocation, rather than just be based on a space standard.

In several recent memos to the Board of Supervisors in support of his budget request, the Public Defender has presented relevant documentation and justification. This same information needs to be presented to the Chief Administrative Office in the department's budget request.

RECOMMENDATION:

The Public Defender continue to improve the quality and comprehensiveness of his requests for space or resources by including relevant documentation and justification.

MATTERS FOR POSSIBLE FUTURE STUDY

General Observations

The course of the management audit of the Public Defender's department has brought the audit team into extensive contact with the principal elements of the justice system both in Los Angeles County and in nine other counties. During these sometimes lengthy discussions, we received numerous observations from a variety of sources which time did not permit us to pursue. Sometimes these comments were simply personal opinions, occasionally they were sincere convictions, often they were expressions of concern from dedicated employees who wanted someone to know what was going on. We include below a brief listing of these matters which either were heard with sufficient frequency to merit mentioning or which bear, on the basis of the team's familiarity with the basic subject matter, a reasonable degree of credibility.

1. There is an apparent significant imbalance in workload among the Municipal Court Districts and among the Superior Court branches. Variations in court work hours were cited as a recurring problem.

2. The increasing demand by many courts for written motions instead of oral has contributed significantly to clerical workload and delays in trials.

3. Superior Court judges prefer to not continue the appointment of the same private attorney on a case where that attorney was initially appointed by the Municipal Court. As a result, there is no continuity and the new attorney must use public funds to review what has transpired on the case.

4. Some jurists expressed their personal opinion that filing criminal charges on selected offenses such as those involving obscenity and multiple traffic warrants in different judicial districts was a waste of time.

5. The District Attorney's policy of no pleas/sentence bargaining in certain matters is increasing court workload.

6. The Sheriff's policy of not providing copies of arrest reports to Public Defender investigators without a court order is time-consuming and wasteful.

7. The regular change in court administrative policies with each new presiding judge is inefficient, costly and traumatic for everyone involved.

8. The court should impose sanctions on the defendant for failing to comply with its order to meet with the Public Defender.

9. There is much anxiety in the justice system about being reversed by a higher court and chastised for omissions or comissions. This problem contributes to much additional work, endless motions, paper work and record keeping. It has forced such inroads on County resources that we may be causing more problems than solving.

10. District Attorney's level of staffing to handle complaints brought in by police officers often causes delays in processing. Sometimes, officers perform the clerical work themselves.

11. Some courts make use of legal services from the Public Defender for ineligible defendants because they are anxious to move their calendars along and the deputy is available.

12. The present practice of court appointing private defense attorneys is subject to abuse. In the absence of a panel or some other availability mechanism, the court must make individual determinations largely based on experience and personal knowledge. In practice, some attorneys receive frequent appointments because they are available, visible and known to the court as having served capably in the past.

13. A State Department of Public Defender could be utilized for conflicts--if ever established. Governor Reagan vetoed a bill to create such a department.

14. Collecting reimbursement for defense services in the court may be more efficient and impressive to clients.

Appendix A

Selected Cases and Legislation Affecting Public Defender Workload

Gideon v. Wainwright (1963) 372 U.S. 335
(See Background Material);

People v. Douglas (1964) 61 C.2d 430
(See Background Material);

In re Johnson (1964) 62 C.2d 325
(See Background Material);

Avan v. Municipal Court (1965) 62 C.2d 630
(See Background Material);

People v. Aranda (1965) 63 C.2d 518
(guidelines for use of extrajudicial statements and/or severence of trial where multiple defendants);

Griffin v. California (1965) 380 U.S. 609
(prosecutor's comments on defendant's failure to testify);

Blake v. Municipal Court (1966) 242 C.A.2d 731
(See Background Material);

Miranda v. Arizona (1966) 384 U.S. 436
(See Background Material);

Chapman v. California (1967) 386 U.S. 18
(beyond reasonable doubt that the error complained of did not contribute to the verdict obtained);

People v. Pennington (1967) 66 C.2d 508
(determination of "doubt" in sanity hearing);

In re Smiley)1967) 66 C.2d 606
(defendant must be advised that court will appoint attorney to represent him if he is unable to afford one);

People v. Coffey (1967) 67 C.2d 204
(guidelines for attacking prior convictions on constitutional grounds);

Section 1168 Penal Code (1967)
(recalling sentenced prisoners for resentencing);

United States v. Wade (1967) 388 U.S. 218
(See Background material)

Witherspoon v. Illinois (1968) 391 U.S. 510
(death sentence cannot constitutionally be executed if imposed by a jury from which have been excused for cause those who, without more, are opposed to capital punishment or have conscientious scruples against imposing death penalty);

Boykin v. Alabama (1969) 395 U.S. 238
(enumerated several federal constitutional rights involved when plea of guilty entered in state criminal trial);

People v. Daniels (1969) 71 C.2d 119
(movement of victim in kidnapping for the purpose of robbery);

In re Tahl (1969) 1 C.3d 122
(relating to the standards for accepting guilty pleas);

Lanterman-Petris-Short Act -- became operative July 1, 1969
(increasing involvement in mental illness problems and conservatorships);

In re Mosley (1970) 1 C.3d 193
(guidelines for submission on transcript of preliminary hearing);

People v. Tenorio (1970) 3 C.3d 89
(court may exercise discretion to strike narcotic prior convictions without being foreclosed by District Attorney);

People v. West (1970) 3 C.3d 595
(plea bargaining accepted practice in American criminal procedure); and

In re Cortez (1971) 6 C.3d 78
(defendant has right to be present and represented by counsel at Tenorio hearing).

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